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Supreme Court of the United States

October Term, 1974

No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,

v.

GERALD G. GOODE, et al.,
Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF THE PHILADELPHIA BAR ASSOCIATION AS AMICUS CURIAE.

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INTRODUCTION.

This brief is filed by the Philadelphia Bar Association, a non-profit corporation whose purpose is to promote public support for reforms and improvements in procedural and substantive justice. Its members include judges of the federal and state courts, prosecutors, attorneys specializing in defense of criminal cases and attorneys practicing in other fields of law. Its representatives serve on numerous advisory committees on law enforcement and criminal justice.

All of the parties have consented to the filing of a brief in this case by the Philadelphia Bar Association as amicus curiae. The consent of each party is in the form of a letter from that party's counsel to counsel for the Philadelphia Bar Association. These letters are on file with the Clerk.

THE PHILADELPHIA BAR ASSOCIATION'S INTEREST IN THIS CASE.

The Philadelphia Bar Association is interested in this case by reason of the allegation in the complaint and the ultimate conclusion of the trial court (the Federal District Court for the Eastern District of Pennsylvania) that the Philadelphia Police Department has failed to provide an adequate system of internal review of complaints brought against police officers by private citizens. The Court of Appeals for the Third Circuit found that this was supported by the record.

Traditionally, members of the bar have been particularly aware of the need for established procedures to protect human rights. The Philadelphia Bar Association believes that respect for the police on the part of all citizens is fundamental to a peaceful and orderly society. It also recognizes that a significant number of persons in Philadelphia do not respect the police. Respect for the police must be founded on confidence that the police will act with restraint and fairness, using no more force than the situation properly calls for. This includes confidence that if an individual policeman acts improperly, he will be disciplined.

One minimal way to build public confidence in the disciplinary system is to provide procedural requirements for receiving, hearing and disposing of complaints made by citizens against individual policemen in a manner that will inspire public confidence. The Philadelphia Bar Association believes that the Order appealed from provides necessary procedural safeguards and should be affirmed.

SUMMARY OF ARGUMENT.

The trial court had the power to fashion the relief it granted, which is appropriate on the record before the Court. Further, though not on the basis of evidence which is part of the record, the Philadelphia Bar Association believes that the present need for relief is even greater than at the time of trial.

That appropriate relief ordered by a court might impose a duty on the municipality against which it is directed is not a valid reason to withhold it.

ARGUMENT.

The trial court found that "violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." *COPPAR v. Rizzo,* 357 F. Supp. 1289, 1321 (E. D. Pa. 1973). It ordered defendants to submit to the court for its approval an improved citizen complaint handling mechanism, which, when approved by the court, would be required to be implemented. 357 F. Supp. at 1322.

The entire first part of the lengthy argument in petitioners' brief filed with this Court asserts the position that the trial court did not have the power to fashion this relief. Petitioners rely solely on the argument that since the proved violations of the constitutional rights of the minority citizens were not found to have been directly at the hands of the petitioners themselves, i.e., were not actually perpetrated by them, the injunctive relief against petitioners is improper. Indeed, the thrust of petitioners' entire brief is the assertion that the disciplinary procedures of the Philadelphia Police Department were found to be inadequate, but not unlawful in and of themselves, and thus should be beyond judicial interference.

Petitioners thereby completely ignore the finding by the trial court, supported by the evidence (and affirmed by the Court of Appeals), that revision of the current procedures for handling civilian complaints will, if carried out in good faith, be effective in preventing future abuses. 357 F. Supp. at 1321. The future abuses referred to are not merely unlawful abuses, but abuses of the constitutional rights of the citizens of Philadelphia who are members of minority groups. Thus petitioners' theory that no relief

should be directed against them ignores the reality that through their non-action they are just as responsible for constitutional violations as if they themselves had committed the unconstitutional acts. Failure to act can have consequences equally as serious as an affirmative act.

Petitioners have stated in their brief that the relationship between the current inadequate complaint handling procedures and the deprivation of respondents' [plaintiffs'] constitutional rights is "indirect and inferential". Petitioners' brief, 27. They have thereby tried to circumvent the conclusion reached by the trial court that the city officials have "minimized" or "avoided" the constitutional violations prepetrated by some members of the Philadelphia Police Department. 357 F. Supp. at 1318.

It is ludicrous to argue, as the city officials do here, that while they have ignored, minimized, and actively avoided dealing with the unconstitutional conduct of those they supervise, the connection between this policy of discouraging complaints and the continued unconstitutional conduct is "inferential." There can hardly be a more classic example than defendants' conduct of what is meant to be reached by the language of 42 U. S. C. 1983 which provides for equitable (and other) relief against "every person who, under color of any . . . custom . . . of any State . . . *causes to be subjected* any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . ." 42 U. S. C. 1983 (emphasis added).

Moreover, the Philadelphia Bar Association believes that there has been no improvement since the time of trial in 1970 in the manner in which the Philadelphia Police Department disciplines itself, and that there are still today a significant number of persons in this City who do not respect the police because of the continued policy of dis-

couraging complaints, leading directly to continued violation of the constitutional rights of minority citizens. Indeed, it seems that the situation, if changed at all, has grown worse. After a seven-month investigation by *The Philadelphia Inquirer* into police abuse of Philadelphia citizens, the conclusion drawn was that "Police abuse of citizens, once restricted to lower-class black neighborhoods, has spread through the city; complaints of policy brutality are now regularly lodged against officers in virtually every police district." *The Philadelphia Inquirer,* February 16, 1975, at 1, col. 3. That investigation also resulted in the conclusion that the number of complaints of police abuse has continued to rise every year, and that fewer than ten per cent of officially registered complaints ever reach the department's disciplinary body, the Police Board of Inquiry. *Id.* at Col. 4.

Petitioners complain that the relief fashioned by the trial court will impose an onerous burden on the Philadelphia Police Department, and describe in detail how in petitioners' view the relief granted will result in a misallocation of police personnel. Petitioners' brief 29-35. The order can hardly be described as directing a misallocation of personnel if it simply directs the police to carry out their function—the prevention and detection of crime without at the same time abusing the constitutional rights of the very persons they are supposed to protect.

A fundamental legal principle is that a court should not avoid granting a certain type of relief simply because the relief will impose an additional and expensive burden on those against whom the order is directed. See, e.g., *Goldberg v. Kelly,* 397 U. S. 254, 265-6 (1969), where this Court held that welfare payments cannot be terminated without a prior hearing, even though the requirement of a hearing was recognized as imposing an additional and expensive burden on defendant city officials. This principle is especially applicable when a branch of government, which exists only through the consent of the governed, attempts to argue that it will be too "difficult" for it to institute a procedure by which it might reduce the violations of the rights of those for whose benefit it exists.

Petitioners' have also suggested that the relief fashioned by the trial court amounts to supervising the functioning of local government. Petitioners' brief, 27. They thereby ignore the reality that the trial court has ordered a branch of local government to implement certain procedural safeguards in supervising itself. Such an order, as described by the Court of Appeals below, is "limited and moderate in tone. . . ." *Goode v. Rizzo,* 506 F. 2d 542, 547 (3d Cir. 1974).

The Court of Appeals for the Third Circuit in *Lewis v. Kugler,* 446 F. 2d 1343 (3d Cir. 1971), cautioned that a court, faced with a case such as this, must balance two major considerations where they diverge or conflict—the protection of constitutional rights, and the protection of as much autonomy for state and local governments as possible. 446 F. 2d at 1352.

The trial court in this case has given full consideration to both concerns in ordering the relief granted.[1] The real thrust of this relief is not so much an intrusion by the trial court into the actual daily administration of the Philadelphia Police Department as it is an aid to department officials by which they might keep their own house in order. The trial court used remarkable restraint in simply directing the Philadelphia Police Department to use a minimal procedure for internal discipline (and thereby,

1. "[I]ntrusion into this sensitive area [police department procedures] should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." 357 F. Supp. at 1320.

hopefully, reduce future abuses), rather than subjecting the department to ongoing civilian or court review.

There is ample evidence in the record before this Court of the antagonism in minority communities towards the police which reverberates beyond them to municipal government and to society in general. The events of recent years in Philadelphia have made imperative the trial court's wise exercise of its power to lay upon the troubled state of police-community relations the moderating influence of procedures designed to reduce the friction generated by the current lack of procedures.

CONCLUSION.

The modest procedural safeguards directed by the trial court below and affirmed by the Court of Appeals will serve both the integrity of the law enforcement system and the security of the community against the arbitrary exercise of policy authority.

The record before this Court amply supports the limited equitable relief granted by the courts below. The Order should be affirmed.

Respectfully submitted,

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